

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

KATHLEEN ALLISON,

Defendant.

COUNTY OF AMADOR, *a public agency of
the State of California,*

Plaintiff,

v.

KATHLEEN ALLISON, et al.,

Defendants.

Case No. 2:20-cv-02482 WBS AC
[consolidated with 2:21-cv-00038 WBS
AC]

**ORDER RE: TERMS FOR
INSPECTION OF PROPERTY**

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 to 1387)

Final Pretrial Conf.: February 13, 2023
Trial Setting Conf.: April 18, 2023

1 This matter is before the court for further proceedings regarding Plaintiffs' motion to
2 compel defendant Kathleen Allison to accommodate Dry and Wet Facility Inspections of the
3 Mule Creek State Prison in Ione, California. ECF No. 22. On January 3, 2022, the motion was
4 granted insofar as the court ordered the inspections to take place, and the parties were directed to
5 submit a stipulation and/or proposed order regarding the terms of the inspections. ECF No. 29.
6 The parties subsequently submitted a stipulation and proposed order in draft form, as permitted
7 by the undersigned, which contained numerous areas of outstanding disagreement. ECF No. 32.
8 These areas of disagreement were discussed at a further motion hearing on February 2, 2022.
9 ECF No. 36. Because the parties were unable to agree on all terms for the inspections, having
10 considered the written submissions of all parties and the arguments at hearing, the undersigned
11 now orders as follows.:

12 **I. Geographic Areas of the Property Subject to Inspection**

13 The representatives of Plaintiffs may only enter the geographic areas designated in
14 Exhibit A.

15 **II. Application and Number of Inspections Permitted**

16 The terms and conditions of this Stipulation shall apply to all inspections of the Property
17 performed by the Plaintiffs in the above-entitled action.

18 Plaintiffs may collectively carry out a total of up to four (4) inspections of the Property
19 under this Stipulation: a "dry weather" and up to three "wet weather" inspections. Plaintiffs do
20 not waive their right to seek further inspections from Secretary Allison if necessary, and
21 Secretary Allison does not waive her right to oppose such requests. Plaintiffs will make a good
22 faith effort to collect necessary evidence in as few inspections as possible.

23 **III. Dates, Start Time, and Time Limit for Inspections**

24 A dry weather inspection will be carried out on March 9, 2022, and wet weather
25 inspections will be scheduled pursuant to the notice provisions of this Stipulation, as provided
26 below. Inspections will take between 5 and 8 hours to complete. An inspection will be
27 completed within one business day between the hours of 9:00 a.m. and 5:00 p.m.

28 To accommodate Plaintiffs' request for an inspection during a Significant Rain Event,

1 Plaintiffs may propose an inspection date by providing written notice to Secretary Allison at least
2 ten (10) calendar days before the proposed inspection date. At least thirty-six (36) hours before
3 Plaintiffs' proposed inspection date, the Parties will confer to determine whether the inspection
4 will go forward. As part of that conference, the Parties will discuss whether a Significant Rain
5 Event is likely to occur on the proposed date, any logistical issues, whether Warden Covello has
6 a basis to deny access in whole or part, and any other necessary issues. The Parties will make
7 their best efforts to complete the inspection(s) on the earliest mutually agreeable date.

8 Warden Covello, in the Warden's sole discretion, will have the right to deny access if
9 circumstances would make an inspection unduly burdensome and pose significant interference
10 with operations at Mule Creek State Prison, if the inspection would create a safety, security, or
11 privacy risk, or if the Warden is unable to clear for entry any representative of Plaintiffs who
12 requested access.

13 **IV. Route for Inspection**

14 Given the large area subject to the inspections, and the related staffing, security, safety,
15 inmate location, and privacy issues, Plaintiffs will advise Secretary Allison at least seven (7)
16 days before the inspection of their route for the inspection.

17 The proposed route will be subject to the approval of the Warden at least three (3)
18 business days before Plaintiffs' inspection, and this approval will not be unreasonably withheld.
19 The route may be altered during the inspection if approved by a designated representative of the
20 Warden, who shall be present for the inspection. The route will be within the area designated in
21 Exhibit A. All Parties understand that the proposed route is provided in order to expedite the
22 inspection, and so that the Parties can be prepared for it, not to limit the areas Plaintiffs may
23 inspect so long as it is within the area designated on Exhibit A.

24 **V. Number of Persons Allowed**

25 The inspections will be performed by no more than a total of four (4) individuals
26 representing both Plaintiffs (one attorney and one consultant representing each Plaintiff).
27 Secretary Allison shall be represented by no more than a total of eight (8) individuals at each
28 inspection.

VI. Equipment and Materials Allowed

Plaintiffs will only be permitted to bring the equipment necessary for the inspection onto the Property, including but not limited to: 1) up to three (3) cameras capable of taking pictures and recording video; 2) up to two ice chests containing only ice (and other equipment listed herein); 3) latex gloves; 4) plastic bags; 5) one notebook and two pens per person; 6) one plastic trowel; 7) a thermometer; 8) a supply of sampling containers and labels; and 9) up to three (3) flashlights.

All equipment and materials (with the exception of privileged information) will be subject to inspection by CDCR staff prior to, during, and after completion of the inspection. Any such inspections shall not “count against” Plaintiffs’ allotted eight hours for completing each of the inspections. Plaintiffs will ensure that all materials and equipment are kept secure and in their possession at all times. All equipment and materials must be taken from the Property by Plaintiffs when the inspection ends.

If Plaintiffs determine that any additional equipment is necessary for an inspection of the Property, Plaintiffs shall identify that equipment in a written notice provided to Secretary Allison at least 10 calendar days before the inspection, and Secretary Allison shall approve or deny Plaintiffs’ ability to bring any such equipment to the inspection at least 36 hours before the inspection.

Plaintiffs will not be allowed to bring any type of telephone or other contraband onto the Property. Plaintiffs may leave their phones in their locked vehicles during the inspections.

VII. Actions Permitted by Plaintiffs

Except as otherwise provided herein, Plaintiffs are only permitted to inspect outdoor areas. Plaintiffs may only enter a building if directed by CDCR staff, as needed to comply with safety and security requirements. Plaintiffs must be escorted by CDCR staff and representatives at all times. Plaintiffs may not interact with inmates or any other staff in any way unless authorized by designated CDCR staff.

Except as otherwise provided below, Plaintiffs may only perform the following actions in the outdoor areas designated in Exhibit A:

a. Visual Inspections

Plaintiffs' representatives may visually inspect above ground areas, below ground areas from above ground, and accessible equipment, in any areas designated in Exhibit A (located at ECF No. 32 at 17). They may not personally physically manipulate any item they encounter, including, but not limited to, equipment, supplies, infrastructure, covers, and landscaping. Should such manipulation be necessary for inspection of subsurface areas, Defendant will perform the manipulation in a timely manner.

b. Sampling of Water

Plaintiffs may perform non-destructive sampling of water (the act of removing water for sampling shall not, in itself, be deemed destructive) in any areas to which they are allowed access (areas designated in Exhibit A). As provided in the previous paragraph, plaintiffs may request that any manholes or other subsurface areas, such as electrical vaults and slide gates, they identify within the area designated in Exhibit A (ECF No. 32 at 17) be unlocked and removed by CDCR staff to allow for the collection of water samples and photo documentation. The request will be allowed so long as it does not create a security or safety risk.

Secretary Allison's representatives will be provided with split samples by Plaintiffs' representatives. So that Secretary Allison's representatives can be sufficiently prepared to receive, handle, and process the split samples, at least ten (10) calendar days before each inspection, Plaintiffs will provide Secretary Allison with the estimated number of samples they anticipate collecting and the analytes they anticipate testing the samples for.

Secretary Allison may test all split samples for the anticipated analytes provided by Plaintiffs. Any time required by the Secretary to receive, handle, or process the split samples (beyond the time required for Plaintiffs' representatives to do the same) shall not "count against" Plaintiffs' allotted eight (8) hours to conduct each inspection.

c. Sampling of Soil or Sediment

Plaintiffs may collect samples of soil, debris or sediment with a plastic trowel in any areas to which they are allowed access (areas designated in Exhibit A). In collecting the sample(s), Plaintiffs must immediately repair any damage to the satisfaction of the Warden.

1 So that Secretary Allison's representatives can be sufficiently prepared to receive, handle,
2 and process the split samples, at least ten (10) calendar days before each inspection, Plaintiffs will
3 provide Secretary Allison with the estimated number of samples they anticipate collecting and the
4 analytes they anticipate testing the samples for.

5 Secretary Allison may test all split samples for the anticipated analytes provided by
6 Plaintiffs. Any time required by the Secretary to receive, handle, or process the split samples
7 (beyond the time required for Plaintiffs' representatives to do the same) shall not "count against"
8 Plaintiffs' allotted eight (8) hours to conduct each inspection.

9 **d. Photographs and Video**

10 Plaintiffs may take photographs and video recording to the extent the Warden or the
11 Warden's representative pre-determines that safety, security, and privacy will not be
12 compromised. See e.g., 15 CCR § 3261.7(g). The Warden shall be responsible for making such
13 determinations within five (5) days of receiving Plaintiffs' proposed inspection route under
14 Section IV herein, except with respect to emergent changes in prison conditions.

15 Plaintiffs may alternatively request that the Warden cause CDCR staff to take
16 photographs and/or record video for them.

17 Plaintiffs are prohibited from taking any photographs or video that include any CDCR
18 staff, representatives, or agents. They are further prohibited from taking any photographs or
19 video of any inmates or security devices. CDCR staff will assist Plaintiffs' representatives with
20 identifying inmates and security devices.

21 **VIII. Inspection of Industrial Areas**

22 Any inspection of areas subject to the State Water Board's Order 2014-0051-DWQ,
23 General Permit for Storm Water Discharges Associated with Industrial Activities ("Industrial
24 General Permit") and No Exposure Certification, and not otherwise relevant to CSPA's claims,
25 may only be carried out by the County.

26 This inspection must be conducted on the same date as the inspection of other areas of the
27 Property but will not "count against" CSPA's time allowed for the inspection. This part of the
28 inspection will be carried out during the inspection of other areas of the Property, and will be

1 limited to a one attorney and one consultant for the County, except to the extent that the County
2 wishes to take samples, in which case CSPA's consultant shall accompany them for purposes of
3 taking any samples.

4 The representatives of the County may enter indoor areas of the Property covered by the
5 Industrial General Permit and No Exposure Certification. No photographs or samples may be
6 taken by the County's representatives indoors. See e.g., 15 CCR § 3261.7(g).

7 The inspection of the areas subject to the Industrial General Permit and No Exposure
8 Certification will otherwise be carried out in the same way as the other portions of the Property.

9 **IX. Privileged and Confidential Information**

10 Plaintiffs agree they are not seeking, and will not collect, any privileged or confidential
11 information. This includes information protected from discovery by the attorney-client privilege,
12 deliberative process privilege, legislative privilege, state secrets privilege, government and law
13 enforcement privilege, work product doctrine, right to privacy, and processes not generally
14 available to the public. If Plaintiffs become aware they have collected any privileged or
15 confidential information, they will immediately delete and/or destroy all copies of that
16 information and will immediately notify Secretary Allison of the issue (unless she notified
17 Plaintiffs of the issue).

18 **X. Use of Information Collected**

19 Plaintiffs agree that all information (including, but not limited to data, photographs, and
20 video) obtained during any inspection of the Property will be used solely in connection with the
21 pending actions and will not be disclosed or distributed to any person other than Plaintiffs'
22 management, their counsel, and their consultants (who are not authorized to further disclose or
23 distribute the information and will be instructed accordingly), and if necessary, the Court.

24 Before any such information is provided to the Court by Plaintiffs, it will be submitted to
25 the Warden who, in the Warden's sole discretion, will determine within seven (7) business days
26 whether any of it constitutes a safety, security, or privacy risk. If the Warden timely determines
27 and notifies Plaintiffs that any such information is deemed a safety, security, or privacy risk, then
28 the parties shall promptly meet and confer to determine whether to submit a stipulated request

1 for filing under seal pursuant to E.D. Cal. R. (“Local Rule”) 141. If the parties do not agree that
 2 filing under seal is appropriate, any Party may bring a motion as further specified below.
 3 Information identified by the Warden as constituting a safety, security, or privacy risk, and that is
 4 the subject of a stipulation or motion for sealing, shall not be filed on the public docket prior to
 5 the court’s ruling on the request.

6 If any Party wishes to file documents with the court under seal, or wishes specific
 7 documents to be filed by the opposing Party under seal, they must comply with the Local Rules
 8 of this court and make a motion before the same judge who will decide the matter related to that
 9 request to seal. The designation of any document as confidential does not automatically entitle
 10 the Parties to file such a document with the court under seal. Parties are advised that any request
 11 to seal documents in this district is governed by Local Rule 141. In brief, Local Rule 141
 12 provides that documents may only be sealed by a written order of the court after a specific
 13 request to seal has been made. Local Rule 141(a). However, a mere request to seal is not
 14 enough under the local rules. In particular, Local Rule 141(b) requires that “[t]he ‘Request to
 15 Seal Documents’ shall set forth the statutory or other authority for sealing, the requested
 16 duration, the identity, by name or category, of persons to be permitted access to the document,
 17 and all relevant information.” Local Rule 141(b) (emphasis added).

18 A request to seal material must normally meet the high threshold of showing that
 19 “compelling reasons” support secrecy; however, where the material is, at most, “tangentially
 20 related” to the merits of a case, the request to seal may be granted on a showing of “good cause.”
 21 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir.), cert. denied,
 22 137 S. Ct. 38 (2016); Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th
 23 Cir. 2006).

24 **XI. Damage Caused by Plaintiffs**

25 Unless otherwise stated herein, Plaintiffs will repair at their sole expense all damage they
 26 cause to the satisfaction of the Warden within five (5) calendar days or the earliest feasible time.

27 **XII. Indemnification and Hold Harmless**

28 Plaintiffs and Plaintiffs’ representatives, attorneys, agents, and consultants who

participate in the inspection (“Indemnifying Parties”) will defend, indemnify and hold harmless CDCR, Secretary Allison, the Warden, their employees, agents, and representatives (“Indemnified Parties”) from and against any and all claims, causes of action, suits, demands, losses, judgments, damages, fines, penalties, liabilities, costs and expenses, including attorneys’ and consultants’ fees and costs (“Claims”) incurred by the Indemnified Parties (“Plaintiffs’ Indemnity”) regarding the Indemnifying Parties’ negligence or willful misconduct.

The Plaintiffs’ Indemnity shall survive the termination of this Stipulation and the resolution of the above-captioned actions.

XIII. Compliance with all Safety, Security, and Privacy Requirements

Plaintiffs will comply at all times with all applicable safety, security, and privacy requirements. This includes the timely completion of CDCR Form 181, attached hereto as Exhibit B, and passing a security screening carried out by CDCR staff. Plaintiffs will be solely responsible for ensuring they are fully aware and fully comply with all requirements.

XIV. Compliance with COVID-19 Specific Protocols

Plaintiffs’ and Defendants’ representatives will comply with all COVID-19 related advisories and requirements at all times. This includes federal, state, and local advisories and requirements, and advisories and requirements of CDCR and Mule Creek State Prison specific to the Property. The Parties understand that these advisories and requirements are subject to change, and they should confirm the operable advisories and requirements before attempting to schedule and carry out an inspection. If there are any additional COVID-19 related requirements of CDCR and Mule Creek State Prison specific to the Property, they shall be shared with Plaintiffs’ counsel seven (7) days ahead of any inspection

XV. Failure to Comply with this Order

If any representative of any Party violates the terms of this Order during an inspection in a way that creates a safety, security, or privacy concern, the inspection may be terminated by the Warden or his representatives, or Plaintiffs’ representatives. If the inspection is terminated, Plaintiffs’ representatives will be required to immediately leave the Property.

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Any Party refusing to proceed with an inspection or terminating an inspection without good cause may be subject to sanctions as determined by the Court in later proceedings.

IT IS SO ORDERED

DATED: February 8, 2022

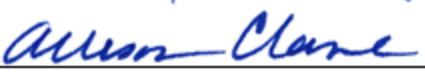

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

